

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

JUSTIN SILVERMAN,)
Plaintiff,)
v.) Civil Action No. 2:16-cv-03686-RMG
NATIONAL BOARD OF MEDICAL)
EXAMINERS,)
Defendant.)

DECLARATION OF GERARD F. DILLON

I, Gerard F. Dillon, hereby declare:

1. I am employed by the National Board of Medical Examiners ("NBME") as its Vice President, Licensure Programs. Except where otherwise noted, I have personal knowledge of the facts set forth herein and could testify competently thereto.
2. Founded in 1915, NBME is an independent, not-for-profit organization whose mission is to protect the health of the public by providing a standardized, state-of-the-art system of assessment for health professionals.
3. NBME is incorporated in Washington, D.C. and has its offices in Philadelphia, Pennsylvania. NBME does not own or lease any property in South Carolina, and it has no employees there. I have confirmed with our administrative staff that NBME maintains no bank accounts and owns no personal property in South Carolina.
4. Together with the Federation of State Medical Boards, another non-profit entity, NBME has established the United States Medical Licensing Examination, or "USMLE." The

USMLE is designed to assess a physician's ability to apply knowledge, concepts, and principles, and to demonstrate fundamental patient-centered skills, that constitute the basis of safe and effective patient care. Jurisdictions across the country rely upon the USMLE as part of their licensure process for ensuring the qualifications of prospective physicians.

5. There are three "Steps" to the USMLE, all of which must be passed before a physician with an M.D. degree is eligible to apply for an unrestricted license to practice medicine in the United States. Step 1 is a multiple-choice examination that assesses understanding and application of basic science concepts important to the practice of medicine. Step 2 has two components: Step 2 CK (Clinical Knowledge), and Step 2 CS (Clinical Skills). Step 2 CK is a multiple-choice examination that assesses the application of medical knowledge, skills, and understanding of clinical science for the provision of patient care under supervision. Step 2 CS uses standardized patients to assess an examinee's ability to gather information from patients, perform physical examinations, and communicate his or her findings. Step 3 assesses whether examinees can apply medical knowledge and understanding of biomedical and clinical science essential for the unsupervised practice of medicine.

6. The USMLE is a national testing program, and the Step exams are administered in locations across the United States. NBME does not itself administer the examinations. Instead, with the exception of the Step 2 CS exam, all of the USMLE exams are administered in testing centers owned or overseen by a third-party vendor, Prometric, Inc. ("Prometric"). Prometric is based in Baltimore, Maryland.

7. It is my understanding that Prometric also administers other examinations in its testing centers, for other organizations, and that one such examination is the Medical College Admission Test.

8. The USMLE Step 1 exam is a standardized test. This means that examinees take the Step 1 exam under the same testing conditions, including standard testing time. Standardization helps ensure that scores achieved on the exam have the same meaning for all candidates, and that no candidates are advantaged, or disadvantaged, by testing under non-standard conditions.

9. The primary exception to the standardized administration of USMLE involves examinees with disabilities. Candidates with documented disabilities may request testing accommodations on the USMLE exam, including, for example, exams in a different format or use of a reader to accommodate visual impairments, use of a scribe to record answers, extra breaks, and extra testing time.

10. If a candidate wishes to request disability-based testing accommodations on the USMLE, he or she submits an application to NBME at its offices in Pennsylvania.

11. For some accommodation requests, NBME seeks the opinion of independent professionals who are experts in the impairment that is the subject of an accommodation request. These experts are located in various parts of the country.

12. All decisions on accommodation requests are made by NBME from its offices in Pennsylvania. When a decision is made, a copy of the decision letter is emailed to the candidate at the address he or she has provided to NBME for receiving correspondence. Candidates may also request that a copy of the decision be mailed to them.

13. The bulk of the written communications that occur between NBME and USMLE candidates occurs by way of email communications. Likewise, when candidates register to take USMLE, and when they submit a request for accommodations, they do so electronically, through links provided on the USMLE's website, www.usmle.org.

14. These procedures were followed with respect to Justin Silverman's request for accommodations on the Step 1 exam. When he requested testing accommodations on Step 1, he submitted an application to NBME electronically that was reviewed at NBME's Pennsylvania office. As part of its review his request, NBME sought opinions from two experts. One of those experts lives and works in New York, the other one lives and works in Illinois. NBME communicated its decision to Mr. Silverman via email. Mr. Silverman, by counsel, requested reconsideration of this decision. NBME communicated its decision on Mr. Silverman's request for reconsideration to him by e-mail and also mailed a copy of the decision to the address that he provided in Charleston, South Carolina and to his attorney Allan Holmes.

15. I have reviewed Justin Silverman's USMLE Step 1 registration record. He completed two registrations for the Step 1 exam. Mr. Silverman initiated the Step 1 registration process in 2015, requesting a testing eligibility window of May 1, 2015 through July 31, 2015. He canceled that registration and never scheduled a test during that testing window.

16. The second registration was submitted via the online application system. On August 10, 2016, Silverman was issued a permit to take the Step 1 exam. He registered to take the test at a Prometric testing center in Savannah, Georgia on August 13, 2016. He did not test on that date.

17. I have attached as Tab A to this Declaration a true and correct copy of the print-out of Mr. Silverman's electronic registration record for the USMLE Step 1 exam.

18. Mr. Silverman has not registered to take any other USMLE Step exam.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of December 2016.


Gerard F. Dillon